

Message

From: O'Brien, Elisabeth (DPH) [/O=COMMONWEALTH OF MASSACHUSETTS/OU=MASSMAIL-01/CN=RECIPIENTS/CN=ELISABETH.O'BRIEN]
Sent: 4/13/2010 4:29:48 PM
To: Nassif, Julianne (DPH) [/O=COMMONWEALTH OF MASSACHUSETTS/OU=MassMail-01/cn=Recipients/cn=Julianne.Nassif]
CC: Salemi, Charles (DPH) [/O=COMMONWEALTH OF MASSACHUSETTS/OU=MassMail-01/cn=Recipients/cn=Charles.Salemi]
Subject: FW: Scheduling

Hi Julie,

I don't know if you were able to respond to this email from Christina Miller or not. Here are my thoughts on this:

1. To date I am not hearing that we are unable to meet our obligation to testify in Suffolk County courts. Each ADA is working things out with the chemist and each ADA has their preferences as to who they feel the need to call, either the primary chemist, GC/MS chemist or both.
2. As far as providing an expert on any given day I feel we need to still work out some details here in the lab. Obviously staffing continues to be an issue....we only have so many GC/MS analysts in the first place and they are probably on the frontline to be offered up to be able to testify in all aspects of a case.
3. The meeting times she offered up were very short notice as we have been very busy....I also don't feel like we have any clear guidance to provide for her at this time. I hope things continue to work out as well as they have for each trial as at least that is what I am hearing anecdotally.

I guess the short answer to this inquiry is that we are currently providing a non testing chemist in some cases, albeit someone who is already involved with the case but did not analyze all aspects....this has been coordinated in conjunction with the ADA involved.

Thanks,
Betsy

From: Miller, Christina (SUF)
Sent: Thursday, April 08, 2010 10:01 AM
To: Nassif, Julianne (DPH); O'Brien, Elisabeth (DPH)
Cc: Spiegel, Ingrid (SUF)
Subject: Scheduling

Dear Julie and Elisabeth,

I hope this message finds you well. As you can see in the e-mails below, we are trying to use non-testing chemists to testify at trial when the testing chemist is unavailable. What would be the best way to select a non-testing chemist to testify on a particular trial day? There are a few other issues we should discuss as well. Maybe we should meet in person?

I am available at the following times. Maybe one will work for y'all.
April 9, 9 am or 4 pm
April 12, 4 pm
April 14, 9 am or 4 pm

Thank you for your consideration,
Christina

Christina Miller

Chief, District Courts and Community Prosecutions
Suffolk County District Attorney Daniel Conley
One Bulfinch Place
Boston, MA 02114
(617) 619-4191
Cell: [REDACTED]

From: Spiegel, Ingrid (SUF)
Sent: Thursday, April 08, 2010 9:03 AM
To: Miller, Christina (SUF)
Subject: RE: Drug Case Update

Hi Christina -

Has the lab given us any guidance on how to choose a nontesting chemist? Do they have a system in place or should we just be calling and asking for someone to step in?

Thanks,
Ingrid

From: Miller, Christina (SUF)
Sent: Wednesday, March 24, 2010 3:22 PM
To: SUF-DL-ADA-All
Subject: Drug Case Update

Good Afternoon District ADAs,

A few reminders and updates concerning how we prosecute drug cases in district court. I am including Superior Court and Appellate Unit ADAs, so they can provide input about these procedures and initiatives. As always, I would like the same input from the District Court ADAs.

While the availability of chemists for trial has been sporadic, the District Attorney has proposed some ways in which we can expedite the availability of chemists.

I. Use of Non-Testing Chemist as Witness at Trial

You should seek to use a non-testing chemist if the testing chemist is not available in your case. Of course you will need to arrange this with the lab long before trial to ensure sufficient time for the chemist to review the notes and report of the testing chemist and to be ready to testify.

Your supervisors have been asked to work with you to find a case appropriate for appeal. Generally, you would make a motion in limine to admit the non-testing chemist's testimony. A sample motion is attached, and is available on the S: drive. If the judge denies your motion, you should request that he or she report the question pursuant to Mass. R. Crim. P. 34. In the alternative, you should file a notice of appeal and move to stay the proceedings while the issue is heard on appeal. Once you have done this, contact your supervisor and the Appellate Unit.

Please keep me informed of how these motions are being received and if there is a possibility of a question being reported or an appeal being taken.

If the motion is allowed, predicate questions are available on the S: drive.

<< File: Motion for Non-Testing Chemist.doc >>

II. Use of Drug Expert to Prove Substance is an Illegal Drug

Some of you are already using the strategy of presenting a drug expert to prove that a substance is illegal. To my knowledge, the only substance in which we have proceeded in this manner is marijuana. We should not be summoning a chemist for most marijuana cases and should be proceeding with a drug expert. A sample motion is attached and is available on the S: drive.

<< File: Motion to Admit Drug Expert_Marijuana.doc >>

I encourage you, in the appropriate case, to use this same strategy with heroin, as I know of no case where heroin has been found to be fake and it has a distinctive smell, texture, and appearance that is unlike any other substance.

III. Request a Longer Continuance for Non-Custody Cases

Attached, and available on the S: Drive, is a motion to continue the trial date for 6 months on non-custody drug cases. This is an update of a motion that was previously circulated. Please either use the motion or argue the content in the motion to seek a continuance for trial.

<< File: Drug Continuance Motion_post MD.doc >>

IV. No Rush Request for Non-Custody Cases

A reminder that we will not send "rush requests," for drug certifications from DPH for a case where the defendant is not in custody, unless you are close to reaching one year from the date of arraignment.

If there are any questions or concerns, please do not hesitate to contact me.

Christina Miller

Chief, District Courts and Community Prosecutions

Suffolk County District Attorney Daniel Conley

One Bulfinch Place

Boston, MA 02114

(617) 619-4191

Cell: [REDACTED]